

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**The Minutes**

**July 26, 2004**

At 9:34 a.m., the court met to begin its court calendar session. Present were Scotland, Presiding Justice; Blease, Associate Justice; Davis, Associate Justice; and Rios, bailiff.

**C047231 CALIFORNIANS FOR AN OPEN PRIMARY v. SECRETARY OF STATE KEVIN SHELLEY and THE LEGISLATURE OF THE STATE OF CALIFORNIA**

Cause called. Fredric D. Woocher argued and Aimee Dudovitz appeared only for petitioners. Marian M. Johnston argued and Dulcinea A. Grantham appeared only for respondent. Geoffrey L. Graybill argued for real party in interest. Cause submitted.

At 10:36 a.m., the court recessed. At 2:03 p.m., the court reconvened. At 2:04 p.m., the court recessed. At 2:08 the court reconvened with Blease, Associate Justice; Morrison, Associate Justice; and Butz, Associate Justice.

**C045021 SHARP CORONADO HOSPITAL et al. v. BONTA', as Director etc.**

Cause called. Patric Hooper argued for appellants. Margarita Altamirano, Deputy Attorney General, argued for respondent. Cause submitted.

**C042230 THE PEOPLE v. RABINO**

Cause called. Hilda Scheib, court appointed counsel, argued for appellant. Clayton S. Tanaka, Deputy Attorney General, argued for respondent. Cause submitted.

At 2:33 p.m., the court recessed. At 2:39 p.m., the court reconvened with Davis, Associate Justice; Raye, Associate Justice; and Morrison, Associate Justice.

**C045118 ACKERMAN et al. v. EDWARDS, Individually and as Chairperson, etc. et al.**

Cause called. Michael V. Stuhff argued and Franklin S. Cibula appeared only for appellants. David Rapport argued for respondents. Cause submitted.

At 3:08 p.m., the court recessed. At 3:09 p.m., the court reconvened with Blease, Associate Justice; Raye, Associate Justice; and Morrison, Associate Justice.

**C043228 THE PEOPLE v. SHAW III**

Cause called. No appearance was made by appellant. John A. Thawley, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:09 p.m., the court recessed until 9:30 a.m., Monday, August 16, 2004.

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**July 26, 2004, continued**

- C043658      DE LA ROSA v. DEPARTMENT OF THE YOUTH AUTHORITY**  
**(Not for Publication)**  
The judgment is affirmed.  
SCOTLAND, P.J.  
We concur:    Blease, J.  
                  Sims, J.
- C044686      In re CHRISTOPHER M. et al.; SACRAMENTO COUNTY DEPARTMENT OF**  
**HEALTH AND HUMAN SERVICES v. SUSAN S.**  
**(Not for Publication)**  
The orders are affirmed.  
BLEASE, Acting P.J.  
We concur:    Davis, J.  
                  Raye, J.
- C044990      In re IAN J.; SAN JOAQUIN COUNTY HUMAN SERVICES AGENCY v.**  
**ANGELIQUE H.**  
**(Not for Publication)**  
The judgment of the juvenile court is affirmed.  
BLEASE, Acting P.J.  
We concur:    Davis, J.  
                  Raye, J.
- C045093      In re S.F.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND**  
**HUMAN SERVICES v. TISHA L.**  
**(Not for Publication)**  
The order is affirmed.  
BUTZ, J.  
We concur:    Blease, Acting P.J.  
                  Davis, J.
- C043253      THE PEOPLE v. POKOVICH**  
**BY THE COURT:**  
Appellant's petition for rehearing is denied.  
SCOTLAND, P.J.

**July 27, 2004**

- C043505      THE PEOPLE v. SCHNATHORST      (Certified for Partial Publication)**  
The judgment is modified... As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections.  
SIMS, J.  
We concur:    Scotland, P.J.  
                  Raye, J.

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**July 27, 2004, continued**

- C043704      THE PEOPLE v. ADAMS      (Not for Publication)**  
The judgment is affirmed.  
SIMS, Acting P.J.  
We concur: Hull, J.  
Butz, J.
- C043913      THE PEOPLE v. JONES      (Not for Publication)**  
The judgment is affirmed.  
SIMS, J.  
We concur: Scotland, P.J.  
Raye, J.
- C044224      THE PEOPLE v. BELAHBIB      (Not for Publication)**  
The judgment is reversed.  
ROBIE, J.  
We concur: Scotland, P.J.  
Butz, J.
- C044411      THE PEOPLE v. BELL      (Not for Publication)**  
The conviction is affirmed. The order of probation is vacated, and the matter is remanded to the trial court for resentencing in accordance with the provisions of Penal Code section 1210.1.  
SIMS, Acting P.J.  
We concur: Nicholson, J.  
Hull, J.
- C044515      THE PEOPLE v. COLEMAN      (Not for Publication)**  
The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting an award of 424 days of presentence actual custody credit, and to forward it to the Department of Corrections. As so amended, the judgment is affirmed.  
NICHOLSON, J.  
We concur: Blease, Acting P.J.  
Raye, J.
- C044953      THE PEOPLE v. NAVIKO      (Not for Publication)**  
The judgment is modified...The case is remanded to the trial court for resentencing.  
SIMS, Acting P.J.  
We concur: Nicholson, J.  
Robie, J.

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**July 27, 2004, continued**

- C045428      THE PEOPLE v. TAYLOR      (Not for Publication)**  
The judgment in case No. F03170 is affirmed. And case No. S125F02 is dismissed.  
SIMS, Acting P.J.  
We concur: Nicholson, J.  
Hull, J.
- C045857      THE PEOPLE v. GRAY      (Not for Publication)**  
The judgment is modified as follows:...  
...As modified, the judgment is affirmed.  
The trial court shall prepare an amended and corrected abstract of judgment incorporating these orders and forward a certified copy to the Department of Corrections.  
SIMS, Acting P.J.  
We concur: Nicholson, J.  
Hull, J.
- C043219      COUNTY OF IMPERIAL et al. v. CALIFORNIA STATE LANDS COMMISSION  
and NORTH BAJA PIPELINE LLC      (Not for Publication)**  
The appeal is dismissed as moot. The parties are to bear their own costs on appeal.  
HULL, J.  
We concur: Sims, Acting P.J.  
Davis, J.
- C043558      BRANSCOMBE et al. v. UNION PACIFIC RAILROAD COMPANY      (Not for Publication)**  
The judgment is reversed. Plaintiffs shall recover their costs on appeal. (Cal. Rules of Court, rule 27(a).)  
ROBIE, J.  
I concur: Raye, J.  
The majority surmises that whether Union Pacific was negligent cannot be resolved in this summary judgment phase of the proceedings, This conclusion reveals the majority's basic misunderstanding of (1) the specific circumstances of this proceeding in which Union Pacific's knowledge and actions are largely undisputed and (2) the court's role in determining duty...  
... I respectfully dissent.  
Nicholson, Acting P.J.

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**July 27, 2004, continued**

**C043636 CALIFORNIA FISH AND GAME WARDEN SUPERVISORS AND MANAGERS  
ASSOCIATION et al. v. DEPARTMENT OF PERSONNEL ADMINISTRATION  
(Not for Publication)**

The judgment is affirmed. The Department of Personnel Administration is awarded its costs on appeal. (Cal. Rules of Court, rule 27(a) (1).)

BLEASE, Acting P.J.

We concur: Raye, J.  
Morrison, J.

**C043784 CURTEMAN v. HENWOOD ENERGY SERVICES, INC.  
(Not for Publication)**

The judgment is affirmed. We award costs on appeal to Henwood. (Cal. Rules of Court, rule 27 (a).)

NICHOLSON, Acting P.J.

We concur: Morrison, J.  
Butz, J.

**C044162 SAN DIEGO UNIFIED SCHOOL DISTRICT et al. v. COMMISSION ON  
STATE MANDATES and STATE DEPARTMENT OF FINANCE  
(Not for Publication)**

The judgment is affirmed. The Commission on State Mandates and the State Department of Finance are awarded costs on appeal.

HULL, J.

We concur: Sims, Acting P.J.  
Nicholson, J.

**C044420 ACE AMERICAN INSURANCE COMPANY v. WALKER, A Minor, etc.  
(Not for Publication)**

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: Raye, J.  
Morrison, J.

**C045004 SHIELDS et al. v. BERBERIAN et al. (Not for Publication)**

The order of dismissal is affirmed. Berberian shall recover costs on appeal. (Cal. Rules of Court, rule 27(a).)

ROBIE, J.

We concur: Blease, Acting P.J.  
Davis, J.

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**July 27, 2004, continued**

**C045038      DEPARTMENT OF ALCOHOL BEVERAGE CONTROL v. ALCOHOL  
BEVERAGE CONTROL APPEALS BOARD and 7-ELEVEN, INC., et al.  
(Not for Publication)**

The decision of the Board is annulled and the matter is remanded to the Board for further proceedings consistent with this opinion. The Department is awarded its costs associated with this review.

HULL, J.

We concur:     Sims, Acting P.J.

Butz, J.

**C043598      In re JAMIE W.; THE PEOPLE v. JAMIE W.  
(Not for Publication)**

The jurisdictional findings and commitment to the California Youth Authority are affirmed.

The matter is remanded to the Yolo County Juvenile Court with directions to declare the misdemeanor or felony status of each offense and to redetermine, in accordance with this opinion, the minor's maximum period of confinement.

SIMS, J.

We concur:     Scotland, P.J.

Raye, J.

**C045053      In re JASMINE I.; THE PEOPLE v. JASMINE I.  
(Not for Publication)**

The order of restitution to Aaron Williams is stricken. In all other aspects, the order of the juvenile court (granting probation) is affirmed.

SIMS, Acting P.J.

We concur:     Nicholson, J.

Hull, J.

**C044039      THE PEOPLE v. DOTSON  
BY THE COURT:**

Appellant's petition for rehearing is granted. The decision filed on July 7, 2004, is vacated.

Appellant may file a supplemental brief on or before August 16, 2004. Respondent may file a supplemental brief within 20 days thereafter. No reply brief will be permitted from appellant.

SCOTLAND, P.J.

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**The Minutes**

**July 27, 2004, continued**

**C045001      BANKS v. WILLIAMS, III**  
BY THE COURT:  
Appellant's request for judicial notice is granted as the the material  
attached to said request.  
Appellant's petition for rehearing is denied.  
Blease, Acting P.J.

**July 28, 2004**

**C035663      THE PEOPLE v. WHITE et al.                      (Not for Publication)**  
The judgment is affirmed.  
RAYE, J.  
We concur: Scotland, P.J.  
Morrison, J.

**C042868      THE PEOPLE v. VUE                                      (Not for Publication)**  
The judgment against defendant is modified... As modified, the judgment  
is affirmed. The trial court is directed to amend the abstract of judgment to reflect  
this modification and to forward a certified copy of the amended abstract to the  
Department of Corrections.  
DAVIS, Acting P. J.  
We concur: Raye, J.  
Morrison, J.

**C043688      THE PEOPLE v. BROWN                                      (Not for Publication)**  
The judgment is modified... As so modified, the judgment is affirmed. The  
trial court is directed to prepare an amended abstract of judgment and to forward  
a certified copy to the Department of Corrections.  
NICHOLSON, J.  
We concur: Sims, Acting P.J.  
Hull, J.

**C043920      THE PEOPLE v. FENNEN                                      (Not for Publication)**  
The trial court is directed to correct the minute order for the sentencing  
hearing to show that the trial court imposed then suspended the parole  
revocation fine (Pen. Code § 1202.45), and to forward a corrected abstract of  
judgment to the Department of Corrections. The judgment is affirmed.  
NICHOLSON, J.  
We concur: Sims, Acting P.J.  
Hull, J.

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**July 28, 2004, continued**

- C044102      THE PEOPLE v. STRONG      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, J.  
We concur:    Sims, Acting P. J.  
                 Morrison, J.
- C044554      THE PEOPLE v. MAHEU      (Not for Publication)**  
The order of the trial court denying defendant's suppression motion is reversed. Within 10 days of the filing of the remittitur in the trial court, the trial court shall enter an order granting defendant's motion to suppress evidence, and vacating defendant's no contest plea. Unless the People elect to proceed with new and different evidence within 10 days of the granting of the suppression motion, the trial court shall dismiss the case.  
NICHOLSON, J.  
We concur:    Sims, Acting P.J.  
                 Hull, J.
- C044799      THE PEOPLE v. RYAN      (Not for Publication)**  
**C045339**      The June 25, 2003, and September 16, 2003, orders are vacated and the cause remanded for further proceedings consistent with this opinion.  
NICHOLSON, J.  
We concur:    Sims, Acting P.J.  
                 Hull, J.
- C045233      THE PEOPLE v. KELLEY      (Not for Publication)**  
The Superior Court is directed to prepare an amended abstract of judgment reflecting the addition of \$255 in penalty assessments pursuant to Penal Code section 1464 and Government Code section 76000, and to forward a copy thereof to the Director of the Department of Corrections. In all other respects the judgment is affirmed.  
SIMS, Acting P.J.  
We concur:    Nicholson, J.  
                 Hull, J.
- C043370      KOSHMAN v. KOSHMAN      (Not for Publication)**  
The judgment (order) is affirmed. Patricia is awarded her costs on appeal.  
HULL, J.  
We concur:    Davis, Acting P.J.  
                 Morrison, J.



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**July 28, 2004, continued**

- C043878      ESTES v. MONROE et al.      (Certified for Publication)**  
The judgment is affirmed.  
RAYE, Acting P.J.  
We concur: Morrison, J.  
Hull, J.
- C044234      In re G.G.; THE PEOPLE v. G.G.      (Not for Publication)**  
The judgment (order committing the minor to CYA) is affirmed.  
NICHOLSON, J.  
We concur: Sims, Acting P.J.  
Hull, J.
- C044858      In re A.P. et al.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. KENNETH P.      (Not for Publication)**  
The orders are affirmed.  
HULL, J.  
We concur: Nicholson, Acting P.J.  
Raye, J.
- C045336      In re JASON P.; THE PEOPLE v. JASON P.      (Not for Publication)**  
The adjudication on count nine (conspiracy to commit vehicle theft of the Honda) is reversed. If the People do not elect to retry Jason on this count within 30 days of the remittitur date of this opinion, the juvenile court shall strike the eight-month term for this count from the maximum term of confinement. The matter is remanded to the juvenile court to impose a reasonable association restriction as a probation condition if one is deemed necessary, and to modify the September 10, 2003, dispositional order to specify that Jason's driving privilege suspension runs from June 11, 2003. A copy of this modified order shall be sent to the juvenile detention facility (Fouts Springs Boot Camp). In all other respects, the judgment is affirmed.  
DAVIS, J.  
We concur: Blease, Acting P.J.  
Robie, J.
- C043574      THE PEOPLE v. ROACH**  
BY THE COURT:  
Appellant's petition for rehearing is granted. The decision filed on June 29, 2004, is vacated.  
Respondent is directed to serve and file a supplemental brief addressing all issues raised by the petition for rehearing on or before August 12, 2004.  
No supplemental reply brief will be allowed.  
NICHOLSON, Acting P.J.

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**July 29, 2004**

- C043663      THE PEOPLE v. COOK      (Not for Publication)**  
The judgment is affirmed.  
RAYE, J.  
We concur:    Blease, Acting P.J.  
Robie, J.
- C043811      DELTA WETLANDS PROPERTIES v. COUNTY OF SAN JOAQUIN et al.      (Certified for Partial Publication)**  
The judgment is affirmed.  
BLEASE, Acting P.J.  
We concur:    Sims, J.  
Raye, J.
- C043383      OPONG-MENSAH v. STRACENER et al.**  
BY THE COURT:  
Respondent's request to publish the opinion filed on June 29, 2004, is denied.  
SCOTLAND, P.J.

**July 30, 2004**

- C044642      THE PEOPLE v. MCNALLY, JR.      (Not for Publication)**  
The judgment is modified... As modified, the judgment is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting the modifications to the judgment and to send a copy of the amended abstract to the Department of Corrections.  
NICHOLSON, J.  
We concur:    Davis, Acting P.J.  
Morrison, J.
- C045381      THE PEOPLE v. PATRICK      (Not for Publication)**  
The judgment is affirmed.  
RAYE, Acting P.J.  
We concur:    Robie, J.  
Butz, J.
- C045625      THE PEOPLE v. SHELTON      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, J.  
We concur:    Blease, Acting P.J.  
Raye, J.

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**The Minutes**

**July 30, 2004, continued**

- C045906      THE PEOPLE v. BAGSHAW      (Not for Publication)**  
The judgment is affirmed.  
Raye, J.  
We concur:    Blease, Acting P.J.  
                 Nicholson, J.
- C035529      LUCAS v. REDIG      (Not for Publication)**  
The judgment is affirmed.  
NICHOLSON, J.  
I concur in much of the analysis and the result reached in the lead  
opinion...  
                 Scotland, P.J.  
I dissent...  
                 Morrison, J.
- C043428      DUDLEY v. DEPARTMENT OF TRANSPORTATION      (Not for Publication)**  
The judgment is affirmed.  
MORRISON, J.  
We concur:    Nicholson, Acting P.J.  
                 Raye, J.
- C044766      RIEVELD et al. v. ROSEBUD STORAGE PARTNERS, L.P. et al.      (Certified for Partial Publication)**  
The judgment is affirmed. (CERTIFIED FOR PARTIAL PUBLICATION.)  
NICHOLSON, J.  
We concur:    Sims, Acting P.J.  
                 Davis, J.
- C045271      BERRY v. BERRY      (Not for Publication)**  
The order is affirmed. Each party shall bear its own costs on appeal.  
MORRISON, J.  
We concur:    Blease, Acting P.J.  
                 Butz, J.

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**The Minutes**

**July 30, 2004, continued**

**C045438      In re VINCENT M.; THE PEOPLE v. VINCENT M.**

**(Not for Publication)**

The order of the juvenile court committing the minor to the California Youth Authority is affirmed. The juvenile court shall prepare a corrected commitment order reflecting a maximum term of seven years two months, and forward a certified copy to the California Youth Authority.

MORRISON, J.

We concur:      Scotland, P.J.

Sims, J.

**C045472      In re W.L. et al.; BUTTE COUNTY CHILDREN'S SERVICES DIVISION  
v. PAUL L.**

**(Not for Publication)**

The orders of the juvenile court are affirmed.

MORRISON, J.

We concur:      Blease, Acting P.J.

Robie, J.

**C045705      In re S.M.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND  
HUMAN SERVICES v. RENAE M.**

**(Not for Publication)**

The order "that a Permanent Plan of a planned permanent living arrangement with a specific goal of adoption is the permanent plan" is stricken. The minor's current permanency plan is long-term foster care. The juvenile court is directed to amend its orders to reflect this modification. As modified, the orders of the juvenile court are affirmed.

SIMS, Acting P.J.

We concur:      Nicholson, J.

Morrison, J.

